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No. 309

In the Supreme Court of the United States

OCTOBER TERM, 1958

LANE INDUSTRIES, INC., PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the United States Court of Claims (Pet. App. 11–33) is reported at 162 F. Supp. 443.

JURISDICTION

The judgment of the Court of Claims was entered on June 4, 1958. The petition for a writ of certiorari was filed on August 26, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTION PRESENTED

Whether assignment of a Lucas Act claim against the United States is "null and void" under the Anti-Assignment Statute, 31 U. S. C. 203, where the assign-

ment was made by a purchaser who acquired the claim from trustees in a bankruptcy proceeding.

STATUTES INVOLVED

The Anti-Assignment Statute, 31 U. S. C. 203, provides in pertinent part:

> All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgements of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgement, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. * * *

The Lucas Act (Act of August 7, 1946, 60 Stat. 902, as amended, 62 Stat. 869, 41 U. S. C. 106 note (1946 Ed. Supp. V)) provides in pertinent part:

> Where work, supplies, or services have been furnished between September 16, 1940, and Au-

gust 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U. S. C., Supp. IV, app. sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within sixty days after the date of approval of this Act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. * * *

SEC. 2. (a) In arriving at a fair and equitable settlement of claims under this Act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between September 16, 1940, and August 14, 1945, and shall consider with respect to such contracts and subcontracts * * * (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; * * *.

(b) Every claimant under this Act shall furnish to the department or agency concerned any

evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

SEC. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within six months after the date of approval of this Act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act.

* * * * *

STATEMENT

This suit was instituted by petitioner, Lane Industries, Inc., on September 10, 1948, under the provisions of the Lucas Act (War Contract Hardship Claims Act, 60 Stat. 902, as amended, 62 Stat. 869, 992, 41 U. S. C. 106 note (1946 Ed. Supp. V)) (Pet. App. 20). The Lucas Act authorizes consideration, adjustment and settlement of the "equitable claims of contractors, including subcontractors and materialmen" who suffered losses between September 16, 1940, and August 14, 1945, in performance of Government contracts. The Act requires that any such claims be limited to losses with respect to which "a written request for relief was filed * * * on or before August 14, 1945" (Pet. App. 22; *supra*). Lane Industries, Inc., not having come into existence until 1948, performed no contracts during the war for the Government. It seeks to recover for a loss of $237,832.75, allegedly in-

curred by another corporation, Lane Lifeboat and Davit Corporation, in the performance of Government contracts during the statutory period (Pet. App. 21). In the Court of Claims, petitioner alleged that it had acquired, by purchase, Lane Lifeboat and Davit Corporation's Lucas Act rights (Pet. App. 21).

Pursuant to Rule 38 (b) of its rules, the Court of Claims directed that a separate trial be held with respect to the following issues:

> 1. Whether under the law plaintiff is entitled to recover in view of the fact that plaintiff was not the original contractor but is the successor in interest to the original contractor through reorganization proceedings.
>
> 2. Whether the written request for relief contained in the letter of March 12, 1944 set out in paragraph 4 of the answer, satisfies the requirements of the Lucas Act.

The following facts were adduced in the course of the trial thus ordered. During the period between August 24, 1942 and August 17, 1945, Lane Lifeboat and Davit Corporation (Lane I) entered into many contracts with federal agencies pursuant to which it manufactured and furnished lifeboats and lifeboat equipment to the United States (Pet. App. 22–23). On some of these contracts, Lane I allegedly sustained the losses on which recovery is now sought under the Lucas Act (Pet. App. 23–24). It is claimed that Lane I made written request in 1944 sufficient to satisfy the requirements of Section 3 of the Lucas Act, *supra*, p. 4 (Pet. App. 23). The evidence does not show the extent of the relief that Lane I sought by this

request (Pet. App. 24). Formal application under the Lucas Act, was made in 1947 (Pet. App. 26). Thereafter, as explained below, Lane I was completely dissolved in bankruptcy proceedings which produced petitioner's present claim that it has assumed Lane I's Lucas Act rights.

On June 9, 1947, Lane I filed a petition for reorganization under Chapter X of the Bankruptcy Act in the District Court for the Eastern District of New York. Among the assets listed in the petition was the present Lucas Act claim in somewhat different form (Pet. App. 26). The petition was approved and Anthony Staudt, a creditor and director of Lane I, and Hunter L. Delatour were appointed as trustees. (Pet. App. 26–27). On March 12, 1948, the United States Maritime Commission rejected Lane I's Lucas Act claim. On May 24, 1948, the bankruptcy court confirmed a judicial sale of Lane I's real property (Pet. App. 27).

On June 15, 1948, Edwin Krolman, a creditor and vice-president of Lane I, acting under the trade name of "Lane Industries", submitted to the bankruptcy court an offer to purchase Lane I's remaining assets, including the Lucas Act claim. Amendments increased the original offer of $31,000 to $41,400 (Pet. App. 27). On June 23, 1948, trustee Delatour petitioned the court to issue an order to show cause why the amended offer should not be approved. Specifically listed as among Lane I's assets was the Lucas Act claim. The petition stated that the offer was made by Krolman "for and on behalf of a

group of employees and officers of the debtor corporation, including Mr. Staudt." After a hearing on the show cause order, the court directed (on July 19, 1948) that sale be made, upon payment of $41,400, to Krolman and his assigns of all Lane I's remaining assets, including the Lucas Act claim (Pet. App. 28). The order contained the following paragraph:

> Ordered that any assignment by Edwin V. Krolman of his rights in the said offer as amended and in the said bid shall be filed herein prior to the closing of title, and upon the filing of such an assignment herein, the sale and transfer of the assets covered by the said offer shall be made by the trustees to the said assignee or assignees of Edwin V. Krolman, with the same force and effect as if such sale and transfer were made to Edwin V. Krolman. [Pl. Ex. 3]

Thereafter, on July 29, 1948, Krolman assigned his interest in the assets so acquired by him to Lane Industries, Inc. (Lane II). This assignment specifically included the rejected Lucas Act claim (Pet. App. 29). It was not, however, until August 5, 1948, that there was filed with New York State a certificate of incorporation for Lane II (Pet. App. 29). At this time, the shareholders of record were Mrs. Staudt and Edwin V. Krolman. On August 23, 1948, the bankruptcy trustees and Lane I conveyed Lane I's Lucas Act claim to Lane II.[1] (Pet. App. 30–31).

[1] The conveyances did not include the assets of Lane I which Edwin V. Krolman had been authorized by the court's July 19, 1948 order to purchase, and to which Lane II, as Krolman's assignee, subsequently acquired the right of purchase (Pet. App. 31).

The authority for these conveyances was stated to be the bankruptcy court's July 19th order and Krolman's subsequent assignment to Lane II.

Lane II, the present petitioner, is not engaged in any business activity and does not have any assets beyond the rejected Lucas Act claim. It exists solely to hold title to this claim (Pet. App. 33).

Following a trial held pursuant to the Court of Claims' order (*supra*, at p. 5), the Commissioner of that court made his findings. After a hearing, based on these findings, the Court of Claims (Judge Whitaker dissenting) dismissed Lane II's petition to recover for the alleged loss suffered by Lane I (Pet. App. 33).

The court based its decision on the Anti-Assignment Statute, 31 U. S. C. 203 (*supra*, p. 2), which makes "null and void" assignment of claims against the United States. The court recognized that 31 U. S. C. 203 does not make "null and void" assignments by operation of law, of which assignments by trustees pursuant to a bankruptcy court's order of sale represent one example. But the court did not agree with petitioner's contention that the Lucas Act claim was assigned to it by operation of law. The holding was that, although as a matter of form Lane II acquired legal title through the trustees, as a matter of substance it received its right to the claim solely as a result of Krolman's voluntary assignment to it—an assignment which was voided by 31 U. S. C. 203. In the court's view, the only assignment by operation of law occurred when the bankruptcy court issued its order on July 19, 1948, confirming sale of the claim to

Edwin Krolman or his assigns. At this point, Krolman had absolute dominion over the claim and could do with it as he wished.[2] Therefore, a subsequent voluntary assignment of the claim to petitioner by Krolman was an indispensable prerequisite to petitioner's having any interest in the claim, and that voluntary assignment was wholly void. The court then considered whether Lane II could sue on the claim if Krolman had been acting as its agent in this matter. The court held that, if such a relationship could have been proved, Lane II would have been entitled to sue on the claim, but it went on to hold that "nothing in the record" showed the existence of agency in this case (Pet. App. 20).[3]

ARGUMENT

The only question presented by the petition has no general importance. Future Lucas Act suits in the Court of Claims are most unlikely;[4] and to the best of our knowledge only two other Lucas Act claims are now before that court, both having been brought by the

[2] The court pointed out that the clause of the bankruptcy court's order (*supra*, p. 7) so heavily relied upon by petitioner merely recognized Krolman's absolute dominion over the claim to do with as he wished (Pet. App. 19).

[3] In view of its holding, the court found it unnecessary to consider the adequacy of Lane I's request for relief made in 1944.

[4] Section 3 of the Act, *supra*, p. 4, requires that claims for losses be filed with the proper agency within six months after approval of the Act (August 7, 1946). Section 6 of the Act requires that claimants dissatisfied with agency action must file their suits in the Court of Claims within six months after that action. At this late date, it is unlikely that any agency has any Lucas Act claims unresolved.

original contractor and not an assignee. Moreover, this case turns on its particular and unique facts, and on those facts the Court of Claims correctly held both that petitioner received its right to the claim solely as a result of Krolman's voluntary assignment (which was barred by the Anti-Assignment Statute, 31 U. S. C. 203), and that Krolman, in making his purchase, was not acting as petitioner's agent.

1. Petitioner's argument that the claim was assigned to it by operation of law because its title was derived from a conveyance by the bankruptcy trustees, pursuant to the court's order of sale, is without substance. The trustees' conveyance was only a matter of form, as is shown by a study of the three transactions involved in the case; petitioner's rights can be traced only to Krolman's *voluntary*, and therefore "null and void", assignment.

The first transaction was the judicial sale to Krolman. When the court issued its order on July 19, 1948, confirming sale of the claim to Krolman or his assigns, Krolman acquired a vested right in that claim and, at that moment, full equitable title passed to him. *Matter of Marathon Foundry & Machine Co.*, 239 F. 2d 122 (C. A. 7), certiorari denied *sub nom. Dyner v. Schwartz*, 353 U. S. 912; *In re Burr Mfg. & Supply Co.*, 217 Fed. 16 (C. A. 2); *Morrison v. Barnette*, 154 Fed. 617 (C. A. 8); Collier, *On Bankruptcy*, Paragraph 70.98 (1942 Ed.). After the confirmation, the sale to Krolman was final and could

[5] *Jardine Mining Co. v. United States*, No. 48880; *Worth Engineer Co. v. United States*, No. 48866.

not be set aside except for reasons which would in equity effect the validity of any private transaction, such as mistake (*Slocum* v. *Edwards*, 168 F. 2d 627 (C. A. 2), *In re Jewett & Sowers Oil Co.*, 86 F. 2d 497 (C. A. 7)), or fraud (*Webster* v. *Barnes Banking Co.*, 113 F. 2d 1003 (C. A. 10)). Thus, as a result of this judicial sale, Krolman had absolute dominion over the claim and could do as he wished with it. As the Court of Claims pointed out (*supra*, fn. 2, p. 9), the bankruptcy court recognized this absolute power, in its order, by spelling out Krolman's unlimited power to direct and enforce any assignment of the claim that he wished. Indeed, to ascribe any other intention to the bankruptcy court would be an unwarranted inference of improper interference with vested interests by that court.

The second transaction involved Krolman's assignment to Lane II, and the third transaction was the trustees' transfer of legal title to Lane II pursuant to Krolman's direction. It is obvious that if Krolman had not assigned his rights to Lane II the trustees could not have subsequently transferred the claim to Lane II. The trustees' conveyance was merely a matter of form and Krolman's assignment was indispensable to petitioner's claim. And in view of Krolman's unlimited power over disposal of the claim, clearly his assignment to petitioner was voluntary, and consequently nullified by 31 U. S. C. 203.

2. There is likewise no merit to petitioner's contention that Krolman, when he made his purchase, was acting as petitioner's agent. In the first place,

Krolman's offer was "for and on behalf of a group of employees and officers of the debtor corporation, including Mr. Staudt." Staudt (acting through his wife) and Krolman—petitioner's sole stockholders, *supra*, p. 7—could hardly be said to be this "group". Secondly, Lane Industries, Inc. came into existence on August 5, 1948, and Krolman's purchase occurred on July 19, 1948. *Supra*, p. 7. It is familiar corporation law that until a corporation exists one cannot be its agent. Thus, in making his purchase, Krolman could not have been acting as an agent for Lane Industries, Inc. Ballantine, *On Corporations*, Section 36 (1946 Ed.); Restatement, Agency, Section 326 (1933). In any event, there is no reason for this Court to review the particular factual finding by the court below that Krolman was not acting as petitioner's agent in this transaction.

3. The Court of Claims found it unnecessary to consider any question apart from the means by which petitioner received its rights to the claim. The Government, however, pointed out below that an additional ground for denying recovery was the inadequacy of Lane I's 1944 request for relief. The evidence shows that the extent of the relief sought by Lane I was not revealed by this request. Under the applicable law, it is very unlikely that the request was adequate. Cf. *Spicer* v. *United States*, 127 C. Cl. 428; *Rosner* v. *United States*, 125 C. Cl. 614.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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